

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of State Parks
Honolulu, Hawaii 96813

August 12, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

SUBJECT: Approval of a Memorandum of Understanding (MOU) Between the United States Department of Interior - National Park Service, The Department of Land and Natural Resources, the Department of Hawaiian Home Lands, and Ke Aupuni Lōkahi, Inc. for the Planning, Construction, Management, Protection and Public Use of the Proposed Ala Pala'au Trail, located in Pala'au State Park, Island of Molokai, Maui County.

INFORMATION

The Division of State Parks (DSP) has been collaborating with a Molokai community organization - Ke Aupuni Lōkahi, on the Ala Pala'au Trail Project. This project is considered a valuable contribution to the island of Molokai. Molokai is unique in that unlike the other islands, there is no easily accessible mauka trail. The limited public trails currently available require long drives via 4x4 vehicles or, in the case of the Kalaupapa Pali Trail, have age requirements. Due to the large percentage of land under private ownership, additional public recreational trail opportunities are very limited. The proposed Ala Pala'au Trail is to be located within Pala'au State Park and would increase public trail access on the island, enhancing outdoor recreational opportunities for both residents and visitors.

The Ala Pala'au Trail Project objectives are to improve mauka public access for increased views of Kalaupapa Peninsula, restore native forest habitat and with appropriate plant species along a short (.7 mile) interpretive trail. This trail would provide access for education of these resources, and also provide local residents and visitors a small but important increase in outdoor experience at Palau State Park. The additional educational benefit to the local community in the form of trail and native plant stewardship also enhances fostering community development on an island that is plagued by economic challenges and a lack of structured youth opportunities.

The funding to support this is through a Hawai'i Tourism Authority (HTA) \$90,000 grant for the planning and implementation of this project, one of the largest HTA has awarded for an environmental project.

ITEM E-1

Ke Aupuni Lōkahi has conducted community meetings, completed a final Environmental Assessment, a management plan – and in doing so has developed an impressive and well-balanced set of partners for this project. Due to Pala’au State Park’s proximity to Kalaupapa National Park (NPS), NPS has offered critical technical and logistical support on this project. Due to the fact that DHHL holds title to Pala’au State Park – which is managed by DSP via a License Agreement, DHHL is a signatory on the MOU and also supports the project. A Deputy Attorney General has reviewed and commented on the MOU, which has been revised accordingly.

RECOMMENDATION:

That the Board:

Approve the attached MOU and authorize the Chairperson to sign.

Respectfully submitted,



DANIEL S. QUINN, Administrator
Division of State Parks

APPROVED FOR SUBMITTAL:



LAURA THIELEN
Chairperson
Board of Land & Natural Resources

Exhibit 1: MOU

Exhibit 2: Project Area Map

MEMORANDUM OF UNDERSTANDING

BETWEEN THE NATIONAL PARK SERVICE, UNITED STATES DEPARTMENT OF THE INTERIOR, STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES, DIVISION OF STATE PARKS, STATE OF HAWAII, DEPARTMENT OF HAWAIIAN HOME LANDS AND KE AUPUNI LŌKAHI

FOR

THE PLANNING, CONSTRUCTION, MANAGEMENT, PROTECTION AND PUBLIC USE OF ALA PĀLĀ'AU

This Memorandum of Understanding ("MOU") is entered into, by and between the United States Department of the Interior, National Park Service (NPS), the State of Hawaii, Department of Land and Natural Resources (DLNR) Division of State Parks (DSP), the State of Hawaii, Department of Hawaiian Home Lands (DHHL), and Ke Aupuni Lōkahi (KAL) for the purpose of planning, constructing, and managing the Ala Pālā'au Project located at Pālā'au, Molokai (Trail).

ARTICLE I: BACKGROUND AND OBJECTIVES

WHEREAS, the State of Hawaii, DSP, KAL, and the NPS have the authority to enter into Agreements that are mutually beneficial and in the interest of the public;

WHEREAS, only State of Hawaii lands are to be administered as initial planning and management components of the Trail; but the parties to this MOU agree to encourage and assist state, local, and private entities to manage and protect associated resources that are adjacent to public lands;

WHEREAS, KAL is a nonprofit organization. KAL is sponsor of the proposed Construction and Public Use of the Trail. The mission of KAL has guided the conception and direction of the proposed project as reflected in the following mission statement:

"Moloka'i is the last Hawaiian island. We who live here choose not to be strangers in our own land. The values of *aloha 'aina* and *malama 'aina* (love the land and care for the land) guide our stewardship of Moloka'i's natural resources, which nourish our families both physically and spiritually. We live by our *kupuna* (elders') historic legacy of *pule o'o* (powerful prayer). We honor our island's Hawaiian cultural heritage, no matter what our ethnicity, and that culture is practiced in our everyday lives. Our true wealth is measured by the extent of our generosity.

- We envision strong *'ohana* (families) who steadfastly preserve, protect and perpetuate these core Hawaiian values.
- We envision a wise and caring community that takes pride in its resourcefulness, self-sufficiency and resiliency, and is firmly in charge of Moloka'i's resources and destiny.
- We envision a Moloka'i that leaves for its children a visible legacy: an island *momona* (abundant) with natural and cultural resources, people who *kokua* (help) and look after one another, and a community that strives to build an even better future on the *pa'a* (firm) foundation left to us by those whose *iwi* (bones) guard our land."

WHEREAS, the proposed approximately .7 mile long trail route traverses only state land within Pālā'au State Park which contains sensitive Hawaiian cultural and natural resources;

WHEREAS, these cultural and natural resources require careful coordination and commitment from the parties to this MOU and general public to insure their sustainability, particularly when exposed to extended public use over time;

WHEREAS, establishing the alignment(s) and effectuating the management, maintenance and regulation of activities along the Trail is a complicated and long-term project;

WHEREAS, NPS, DSP, DHHL and KAL have determined that it is necessary to establish a documented working relationship between the parties of this MOU;

WHEREAS, NPS, DSP, DHHL, KAL and the various members of the Molokai community support the concept of a properly protected and managed Trail for traditional and recreational access;

WHEREAS, DLNR has jurisdiction of the parcel and the proposed Trail through License Agreement No. 336, dated July 9, 1993, between DHHL and DSP, which allows for the application of respective and applicable Hawaii Revised Statutes (HRS) and Hawaii Administrative Rules (HAR);

WHEREAS, it is essential to coordinate and clarify the jurisdictional, regulatory and management actions, and fiduciary responsibilities between the Federal and State governments and private entities in relation to the management and maintenance of the Trail in order to provide optimal resource protection, a seamless trail experience for the user and eliminate any management ambiguity;

ARTICLE II: AUTHORITY

1. Hawaii Revised Statutes (HRS) Chapters 184
2. Hawaii Administrative Rules (HAR) Chapters 13-146
3. Hawaiian Homes Commission Act

ARTICLE III: STATEMENT OF WORK

1. All of the parties mutually agree to meet, confer, consult, and plan together and to
 - a. Support the planning for, and implementation of, the Trail Comprehensive Management Plan (CMP) and to manage the Trail's resources as appropriate and feasible.
 - b. Establish individual coordinators within each agency for Trail administration activities.
 - c. Keep each other informed and consult periodically on management issues pertaining to the Trail.
 - d. Collaborate on amendments or modification to this MOU, as reasonably needed, to further clarify the jurisdictional and working relationship between the five parties or any additional organizations or agencies.
 - e. Work to develop a single set of guidelines regarding administration and management of the Trail to avoid inconsistency.
 - f. Develop and implement a Programmatic Agreement in accordance with the Section 106 of the National Historic Preservation Act and its implementing regulations, including 36 CFR Part 800.6(a)(C) and 800.14(b), and with the respective agencies to ensure appropriate identification and treatment of historic properties potentially affected by use of the Trail and to coordinate federal and state statutory and regulatory authorities regarding historic properties and burial sites.
 - g. The parties are not obligated to commit resources or to participate in obtaining funds unless such commitments are a part of a specific, separate agreement. Parties may, but are not required to, enter into specific agreements and working plans for implementation of individual projects, hiring of personnel, transfer of funds, purchasing of supplies, and other matters.
2. **KAL agrees to:**
 - a. Act as the lead organization in coordinating and conducting activities associated with the planning and implementation of the CMP and this MOU and with administration, maintenance and coordinating community stewardship and management of the Trail.
 - b. Review and write and submit land use permit applications, environmental assessments and impact statements, and other reviews pertinent to the Trail, as requested by parties to this MOU.

- c. At its own cost and expense, shall observe, perform and comply with all laws, ordinances, rules and regulations of all governmental authorities now or at any future time during the term of this MOU; and, shall indemnify the Department of Hawaiian Home Lands, State of Hawaii and Department of Land and Natural Resources, State of Hawaii against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of said laws, ordinances, rules and regulations or of this covenant.
- d. Shall indemnify, defend, and hold harmless the Department of Hawaiian Home Lands, State of Hawaii, and the Department of Land and Natural Resources, State of Hawaii, their officers, agents, and employees from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of KAL or its employees, agents, or officers under this MOU. The provisions of this paragraph shall remain in full force and effect notwithstanding the revocation, expiration, or termination of this MOU. The purchase of liability insurance shall not relieve KAL of the obligations described herein.

3. NPS agrees to:

- a. Produce and share among the parties Geographic Information System (GIS) maps documenting the proposed trail route submitted by KAL and others, including data generated by the NPS, provided that such information is used in compliance with the terms of the National Historic Preservation Act and the Archaeological Resources Protection Act of 1979.
- b. Work with DLNR and KAL to designate responding authorities to legal issues associated with the trail.
- c. Work with partners to determine and designate management entity for state-owned portions of the Trail or for land owned by private entities that wish to participate in the Ala Pālāau Trail program.
- d. Coordinate with KAL on issues that pertain to the Trail.
- e. Provide technical and staff assistance with the design, construction and maintenance of the trail.
- f. Collaborate on the design of signs and interpretive media and provide technical interpretive assistance.

4. DLNR agrees to:

a. Through the Division of State Parks:

- i. Support KAL's construction, management and maintenance of the Trail consistent with the KAL Comprehensive Management Plan.
- ii. Be the sponsoring State agency during the submittal of the proposed draft and final E.A. on behalf of KAL.
- iii. Provide input on the Trail design and management planning and maintenance process.

5. DHHL agrees to:

- a. Allow construction, maintenance and management of the Trail consistent with the KAL Comprehensive Management Plan as permitted in License Agreement 336.

ARTICLE IV: TERM OF MOU

This MOU will remain in effect for five years, beginning on the date of the last signature below. This MOU may be renewed upon mutual agreement between the Parties.

ARTICLE V: KEY OFFICIALS

Key officials are essential to ensure maximum coordination and communication between the parties and the work being performed. They are:

For NPS:

Steve Prokop, Superintendent
Kalaupapa National Historical Park
P.O. Box 2222
Kalaupapa, HI 96742
Telephone: 808-567-6802 ext 1100
e-mail: steve_prokop@nps.gov

For DLNR:

Dan Quinn, Administrator
Division of State Parks
Department of Land and Natural Resources
1151 Punchbowl St. Honolulu, HI, 96822
Telephone: (808) 587-0290

For DHHL:
Linda Chinn, Administrator
Land Management Division
91-5420 Kapolei Parkway
Kapolei, HI 96707
Telephone: (808) 620-9450

For KAL:
Stephanie Dunbar-Co
Ala Palaa Project Coordinator
P.O. Box 1634
Kaunakakai, HI 96748
Telephone: (808) 553-8188

ARTICLE VI: MODIFICATION AND TERMINATION

1. Upon mutual consent of the parties, this MOU may be modified or amended as necessary to clarify roles, management obligations, regulatory functions, or any other purpose necessary to further the administration of the Trail.
2. Modifications or amendments to this MOU may be proposed by any Party and shall become effective upon written approval by all parties.
3. This MOU may be terminated upon 60 days advance written notice given by one of the parties to the others, or it may be terminated earlier by mutual consent of all Parties.

ARTICLE VII: STANDARD CLAUSES

1. Civil Rights

During the performance of this MOU, the parties agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, religion, age, sex, or national origin. The parties will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, age, sex, or national origin. No otherwise qualified individual will be denied access to a program or activity solely on the basis of a disability.

2. Publications of Results of Studies

No party will unilaterally publish a joint publication without consulting the other parties. This restriction does not apply to popular publication of previously published technical matter. Publications pursuant to the MOU may be produced independently or in

collaboration with others; however, in all cases proper credit will be given to the efforts of those parties contributing to the publication. In the event no agreement is reached concerning the manner of publication or interpretation of results, any party may publish data after due notice and submission of the proposed manuscripts to the other parties. In such instances, the party publishing the data will give due credit to the cooperation but assume full responsibility for any statements on which there is a difference of opinion.

3. Non-Funds Obliging Document

This instrument is neither a fiscal nor a funds obligation document. Any endeavor to transfer anything of value involving reimbursement or contribution of funds between the parties will be handled in accordance with applicable laws, regulations, and procedures. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority of noncompetitive award to the cooperator or any contract or other agreement.

4. Any and all disputes or questions arising under this MOU shall be referred to the Chairperson of the Board of Land and Natural Resources and the Chairman of the Hawaiian Homes Commission and the Chairs' determination of these disputes or questions shall be final and binding on the parties.

Approved as to Form:

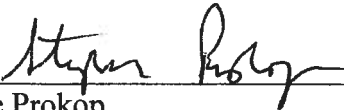
For DLNR:

For DHHL:

Deputy Attorney General Date

Deputy Attorney General Date

For the National Park Service:



Steve Prokop
Kalaupapa National Park Superintendent

4-19-10

Date

For the State of Hawaii Department of Hawaiian Home Lands:

Kaulana H. R. Park
Chairman, Hawaiian Homes Commission

Date

For the State of Hawaii Department of Land and Natural Resources:

Laura T. Thielen
Chairperson, Board of Land and Natural Resources

Date

For Ke Aupuni Lōkahi:

Stacy Crivello
Stacy Crivello
Ke Aupuni Lōkahi, Chairperson

040110
Date

STATE OF HAWAII

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} SS.
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COUNTY OF MAUI

On this 1 day of April, 20 10, before me personally appeared Stacy Crivello
to me known to be the person described in and who executed the foregoing instrument and
acknowledged that she executed the same as her free act and deed.

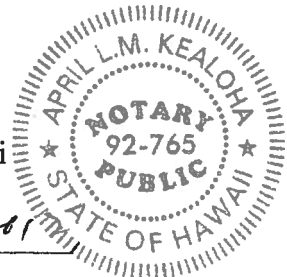
Witness my hand and seal.

Doc Date: 4-1-10 # Pages: 8 *April L.M. Kealoha*
Name: April L.M. Kealoha Notary Public for the State of Hawaii
Circuit

Doc. Description: Memorandum My commission expires: 11-9-2011
April L.M. Kealoha

April L.M. Kealoha 4-1-10
Signature Date

NOTARY CERTIFICATION



Ala Pala'au Project

Proposed Trail

Existing Roads and Trails

Dirt Road

Paved Road

Existing Trail

Land Stewardship

Pala'au State Park

Kalaupapa NHP

Private Land Owner

Land ownership information provided by
Main County, Tax Assessor Parcel Data, 2008

Map prepared by
National Park Service - PWRD GIS, Honolulu

0 500 Feet

Moloka'i

0 5 Miles

New Document RT/CAL/Kala and

Kalaupapa National
Historical Park

Pala'au State Park

Overlook

Phaia Rock

Parking

Picnic Tables

Paved